

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:CHI:2:TL-N-20-01
JPJankowski

date: July 2, 2001

to: James Baltikowski, Team Manager, LMSB:G1352
Attn: Bill Daniels, Team Leader, LMSB:G1352

from: Associate Area Counsel, LMSB
Chicago, Group 2

subject: [REDACTED]
Request for Legal Advice and Assistance

The purpose of this memorandum is to supplement our previous advice to you, contained in a memorandum dated May 11, 2001. In that memorandum, we addressed your request for supplemental legal advice with respect to your Collateral Agreement. Specifically, you asked the undersigned to clarify whether the necessary LMSB delegation orders have been established to permit someone other than Mr. Thomas W. Wilson, Jr., Director, LMSB Communications, Technology and Media (LM:CTM), to execute the Collateral Agreement, on behalf of the Commissioner.

In our May 11, 2001 memorandum, we concluded that Mr. Wilson was specifically authorized to execute the collateral agreement. Beyond that, we advised that the relevant delegation orders were ambiguous and inconclusive, in identifying other officials with the actual or apparent authority to execute your Collateral Agreement. Accordingly, we advised you to take no action on the advice contained therein, until the National Office could be consulted and some further clarification was received by the undersigned. We also advised you that you would be promptly notified of any exceptions or modifications recommended to the advice contained therein.

On June 29, 2001, the undersigned received a facsimile message from the National Office (CC:PA:APJP:B01; Tiffany P. Smith, Attorney Advisor), which took exception to the advice contained in our Memorandum dated May 11, 2001. This memorandum contains the substance of the exception(s) expressed by the National Office. Specifically, with respect to the IRS LMSB officials authorized to execute your Collateral Agreement.

In accordance with the April 2, 2001 Office of Chief Counsel directive, regarding standardized disclosure statements, you are

hereby advised that this memorandum should not be cited as precedent.

Discussion

As you know, your case is under the jurisdiction of the LMSB Industry Director for Communications, Technology and Media (CT&M). The CT&M Director is Mr. Thomas W. Wilson, Jr. and we believe that the current CT&M Industry Directors of Field Operations are JoAnn G. Bank and Michael Donovan. Under the authority of Delegation Order Number 40 (Rev. 6), Mr. Wilson is delegated with the appropriate authority to make any credits or refunds. In that regard, the National Office has sought to clarify in their review of the relevant delegation orders whether the current CT&M Industry Directors of Field Operations, JoAnn G. Bank and Michael Donovan, are also authorized to execute the Collateral Agreement. They have concluded that they are.

Accordingly, either Mr. Wilson, as Director CT&M or CT&M Industry Directors of Field Operations, JoAnn G. Bank and Michael Donovan may approve the Collateral Agreement. We recommend that you seek the immediate approval of Mr. Wilson, in his capacity as Director CT&M or a Director of Field Operations for CT&M.

Should you have any questions regarding this memorandum or our recommendations, please contact the undersigned at (312) 886-9225, Extension 319.

STEVEN R. GUEST
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
JOHN P. JANKOWSKI
Special Litigation Assistant

cc:

James C. Lanning, Area Counsel (CC:CHI:RFP:LMSB 3)
Barbara B. Franklin, Senior Legal Counsel (CC:RFP:LMSB 3)
William G. Merkle, AAC (CC:LM:RFP:SLCHI)
Steven R. Guest, AAC (CC:CHI:LMSB Group2)
Harmon B. Dow, AAC, Industry Programs (CC:CHI:RFP:LMSB 3)
Barbara M. Leonard, AAC, Industry Programs (CC:OAK:CTM:LMSB 5)

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:LM:RFP:CHI:2:TL-N-20-01

JPJankowski

date: May 11, 2001

to: James Baltikowski, Team Manager, LMSB:G1352
Attn: Bill Daniels, Team Leader, LMSB:G1352

from: Associate Area Counsel, LMSB
Chicago, Group 2

subject:

Request for Legal Advice and Assistance

The purpose of this memorandum is to respond to your supplemental request for legal advice and assistance with respect to your draft "Collateral Agreement". You previously asked the undersigned to review the draft document for sufficiency and to facilitate the coordination of processing the document with the Joint Committee Coordinator, Mr. Bernie DeRango. Our review of the draft "Collateral Agreement" was conveyed to you, with specific recommended steps to be completed, in a memorandum dated January 3, 2001. In our memorandum, we suggested among other things, that you verify the following:

1. Identify whether the necessary LMSB delegation orders have been established to permit someone other than Mr. Thomas W. Wilson, Jr., Director, LMSB Communications, Technology and Media (LM:CTM), to execute the Collateral Agreement, on behalf of the Commissioner.

2. Determine as a matter of convenience, whether the address in the opening paragraph of the Collateral Agreement should be that of Mr. Wilson or in care of the local Joint Committee Coordinator in Chicago, Mr. DeRango.

In your supplemental inquiry, you indicated that you have been unable to conclusively verify whether the necessary LMSB delegation orders have been established to permit someone other than Mr. Wilson to execute the Collateral Agreement. In response to your inquiry, the undersigned informally coordinated these same matters with Barbara Franklin, Senior Legal Counsel (CC:RFP:LMSB 3). It is clear, that the question(s) you have posed herein do not rise to the level of "significant" industry issues. Accordingly, no further preliminary coordination with the National Office or other industry counsel was deemed

necessary, prior to providing you with the advice contained herein.

As you know, these matters arise from the former Illinois District Director's ongoing Large Case examination of [REDACTED]. The assistance provided by the undersigned is in accordance with the former Large Case Coordination Procedures, for all significant advice provided in non-docketed (LMSB) large cases. The undersigned is currently assigned to provide you with assistance on this case under the Attorney-Advisor Program.

In accordance with the April 2, 2001 Office of Chief Counsel directive, regarding standardized disclosure statements, you are hereby advised that this memorandum should not be cited as precedent.

Discussion

Your original request for assistance arises from [REDACTED]'s request for the prompt payment of carryback refund claims, filed for the fiscal tax years ending in [REDACTED] of [REDACTED], [REDACTED] and [REDACTED]. In accord with relevant manual provisions, the taxpayer is required to provide the Service with an irrevocable surety bond or bank letter of credit, in order to protect the Commissioner's interest until the claims and the originating tax year for the carrybacks are reviewed and determined to be accurate. (See Internal Revenue Manual ("IRM") 4.3.5 Chapter 6, Subsection 6.5.3 and the posting of a bond or security) It is at this point, that you asked for our review of the draft Collateral Agreement. This matter will ultimately need to be submitted to the Joint Committee on Taxation, since the claims total approximately \$[REDACTED], without imputed interest.

No refund or credit of any income tax in excess of \$[REDACTED] (\$[REDACTED] on or after [REDACTED]) can be made until a report giving a summary of the facts and the decision or recommendations of the Secretary are submitted to the Joint Committee on Taxation. See I.R.C. § 6405(a). As used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the term "Secretary" means the Secretary of the Treasury or his delegate or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed. See I.R.C. § 7701(a)(11)(B) and (12); Treas. Reg. § 301.7701-9(a).

Treasury Regulation § 301.7701-9(b) provides:

In any case in which a function is vested by the Internal Revenue Code of 1954 or any other statute in the Secretary or his delegate, and Treasury regulations or Treasury decisions approved by the Secretary or his delegate provide that such function may be performed by the Commissioner, assistant commissioner, regional commissioner, assistant regional commissioner, district director, director of a regional service center, or by a designated officer or employee in the office of any such officer, such provision in the regulations or Treasury decision shall constitute a delegation by the Secretary of the authority to perform such function to the designated officer or employee. If such authority is delegated to any officer or employee performing services under the supervision and control of the Commissioner, such provision in the regulations or Treasury decision shall constitute a delegation by the Secretary to the Commissioner of the authority to perform such function and a redelegation thereof by the Commissioner to the designated officer or employee.

Treasury Regulation § 301.7701-9(c) provides:

Any officer or employee, including the Commissioner, authorized by regulations or Treasury decision to perform a function shall have authority to redelegate the performance of such function to any officer or employee performing services under his supervision and control, unless such power to do so redelegate is prohibited or restricted by proper order or directive. The Commissioner may also redelegate authority to perform such function to other officers or employees under his supervision and control and, to the extent he deems proper, may authorize further redelegation of such authority.

Treasury Regulation § 301.7701-10 provides:

The term "District Director" means the district director of internal revenue for an internal revenue district. The term also includes the Assistant Commissioner (International).

The aforementioned regulations indicate that the Secretary may delegate authority to perform a particular function either by regulation or by a separate direct or indirect redelegations of authority. Once an officer has been delegated authority, that

officer generally is authorized to redelegate his authority to other officers and employees under his or her control.

The Service uses written delegations of authority to redelegate authority from the Secretary to various officers. The objectives, scope and impact of delegation orders are discussed at IRM 1.2.3 Chapter 4 "Internal Management Document System", which provides in pertinent part:

4.2 (1) The objectives of Delegations of Authority are to: a. vest authority at the point where immediate responsibility has been placed....

4.2 (2) To meet these objectives, authority should be delegated directly to the lowest level expected to take final action ... Delegating authority to the lowest level for action means that: a. Every intervening line supervisory position up to and including the Commissioner has the same authority...

4.3 (2) Delegation Orders are numbered sequentially and remain in effect until revoked or superceded...

4.3.1 (1) Existing Delegations of Authority made by a Service official remains the responsibility of the position no matter who serves as incumbent. It is treated as if it was ordered by the new incumbent unless or until he/she revises or revokes the authority.

4.3.1 (2) When organizational changes are made which change title/designation, without substantive changes in functional activity, existing Delegation Orders remain in effect until updated by the appropriate authority.

With respect to the authority to report to the Joint Committee on Taxation, under I.R.C. § 6405(a), the Secretary has redelegated authority to act to the Commissioner. In addition, pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10; 26 USC 6229; 26 CFR 301.6501(c)-1; 26 CFR 301.6502-1; 26 CFR 301.6901-1(d); and 26 CFR 301.7701-9, the Commissioner of Internal Revenue delegated much of the same authority to the officials set forth in Delegation Order Numbers 40 and 154.

Under Delegation Order Number 40 (Rev. 6), regarding Credits and Refunds, the authority to make and process credits or refunds, including those cases requiring a report to the Joint

Committee on Taxation, was updated on October 2, 2000. Specifically, the delegation order provides the following:

"Authority: After compliance with all requirements of existing procedures for review, to make credits or refunds, within the applicable period of limitations, of overpayments in any amount, of any internal revenue tax, additional amount, addition to the tax, assessable penalty and allowable interest thereon, including those cases requiring a report to the Joint Committee on Taxation."

As updated, the authority to make credits or refunds was amended to reflect the new organizational titles required by the IRS Modernization to include "LMSB Directors or equivalent".¹

Under Delegation Order Number 154 (Rev. 10), regarding Reports of Refunds and Credits to the Joint Committee on Taxation, the authority to make and process reports to the Joint Committee on Taxation was also updated on October 2, 2000. Specifically, the delegation order provides, in relevant part, the following:

"Authority: To make the decision and report refunds and credits to the Joint Committee on Taxation as required by I.R.C. Section 6405 on cases within their jurisdiction."

As updated, the authority to make reports on credits or refunds to the Joint Committee on Taxation was amended to reflect the new organizational titles required by the IRS Modernization to include among others, "Manager, Quality Assurance".²

¹ See Delegation Order Number 40 (Rev. 6) Paragraph 2 (Note). "This authority is also delegated to Directors, Accounts Management Field; Directors, Compliance Services Field; Directors, Submission Processing Field; W&I, SB/SE, and LMSB Directors or equivalent; TE/GE Directors; Appeals Area Directors, Deputy Appeals Area Directors; National Taxpayer Advocate; Local Taxpayer Advocates." (Emphasis added)

² See Delegation Order Number 154 (Rev. 10) Paragraph 2 (Note). "This authority is also delegated to LMSB Directors International; Manager, Quality Assurance; Operating Division Counsels; Directors, Appeals Operating Units; Senior Technical Advisors to Assistant Deputy Commissioners, Division

In your case, we understand [REDACTED] to be under the jurisdiction of the LMSB Industry Director for Communications, Technology and Media (CT&M). The CT&M Director is Mr. Thomas W. Wilson, Jr. and the current CT&M Industry Directors of Field Operations are JoAnn G. Bank and Mike Donovan. Under the authority of Delegation Order Number 40 (Rev. 6), Mr. Wilson is delegated with the appropriate authority to make any credits or refunds.³ Presumably, this would include the authority to comply with the existing procedures of entering into a formal "Collateral Agreement", in order to facilitate the timely issuance of the refund that [REDACTED] is seeking.

What is not as clear is whether the current CT&M Industry Directors of Field Operations, JoAnn G. Bank and Mike Donovan, are the "equivalent(s)" of the "LMSB Director" contemplated in Delegation Order Number 40. **Accordingly, without further National Office clarification, we recommend that you seek the endorsement of Mr. Wilson, Director CT&M, as the approving official for the Collateral Agreement. Secondly, we also recommend that you use the local Chicago address of the Manager, Quality Assurance, for the Collateral Agreement.**

Finally, while your draft Collateral Agreement is the nature of a closing agreement, as contemplated under Delegation Order Number 97 (Rev. 34) and I.R.C. § 7121, it is nonetheless not a formal closing agreement. As you may know, under Delegation Order Number 97 (Rev. 34), regarding closing agreements for an Internal Revenue Tax Liability, the authority to enter into and approve a written agreement with any person, relating to their tax liability, was also updated on October 2, 2000. As updated, the authority to enter into written agreements was redelegated to LMSB Directors, Field Operations.⁴ However, since your Collateral Agreement is not a closing agreement, you should not rely on Delegation Order Number 97 to assume that the LMSB

Commissioners." (Emphasis added)

³ Under Delegation Order Number 40 (Rev. 34), Paragraph 3, no authority has been provided to permit further redelegations of authority under this provision, below the LMSB Director or equivalent position.

⁴ See Delegation Order Number 97 (Rev. 34) Paragraphs 4 and 5. "This authority is also delegated to TE/GE Directors, Employee Plans, Exempt Organizations, and Government Entities; W&I Director, Compliance and SB/SE Director, Compliance; **and LMSB Directors, Field Operations**; Director International." (Emphasis added)

Industry Directors of Field Operations have the authority to approve and sign your draft Collateral Agreement.

Conclusion

We recommend that you seek the immediate approval of Mr. Wilson, in his capacity as Director CT&M, to approve the Collateral Agreement and use the local Chicago address of the Manager, Quality Assurance for all official communications for purposes of the Collateral Agreement and the irrevocable surety bond.

In accordance with the former Large Case (LMSB) coordination procedures with the National Office, this written legal advisory is being treated as a non-significant advice request (NSAR). We are submitting this advisory opinion for post review and anticipate a 10-day response from the National Office. As you know, the response can supplement, modify and/or reject the advice contained herein. **Accordingly, please take no action on the advice contained herein, until such National Office response is received by the undersigned. You will be promptly notified of any exceptions or modifications recommended to the advice contained herein.**

In the interim, should you have any questions regarding this memorandum or our recommendations, please contact the undersigned at (312) 886-9225, Extension 319.

STEVEN R. GUEST
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
JOHN P. JANKOWSKI
Special Litigation Assistant

cc:
TSS4510, Resource Mailbox (CC:PA:TSS)
James C. Lanning, Area Counsel (CC:CHI:RFP:LMSB 3)
Barbara B. Franklin, Senior Legal Counsel (CC:RFP:LMSB 3)
Steven R. Guest, Associate Area Counsel (CC:CHI:LMSB Group2)
Harmon B. Dow, Associate Area Counsel, Industry Programs
(CC:CHI:RFP:LMSB 3)
Barbara M. Leonard, Associate Area Counsel, Industry Programs
(CC:OAK:CTM:LMSB 5)